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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/848,112	05/02/2001	Victor Pertegaz-Esteban	5536.02	7616

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DORSEY & WHITNEY, LLP  
INTELLECTUAL PROPERTY DEPARTMENT  
370 SEVENTEENTH STREET  
SUITE 4700  
DENVER, CO 80202-5647

EXAMINER
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HWANG, VICTOR KENNY

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 02/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	09/848,112		PERTEGAZ-ESTEBAN, VICTOR	
	<b>Examiner</b>		<b>Art Unit</b>	
	Victor K. Hwang		3764	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 November 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 24, 26, 30 and 32-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 24, 26 and 39 is/are allowed.
- 6) ☒ Claim(s) 30, 32 and 34-38 is/are rejected.
- 7) ☒ Claim(s) 33 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 February 2004 and 22 November 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION*****Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 22, 2004 has been entered.

***Drawings***

2. The replacement drawings were received on February 5, 2004 and further replacement drawings were received on November 22, 2004. These drawings are acceptable.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 30, 32 and 38 are rejected under 35 U.S.C. 102(b) as being anticipated by *Roland* (US Pat. 799,270). *Roland* discloses an exercise device having a load 9, the device comprising at least one arm assembly operably attached to the load and a handle assembly. The handle assembly comprises a generally U-shaped bracket 12 defining a base member and

supporting a gripping portion 12. A first axle 2 is rotatably connected with the base member 13 and extends angularly from the base member. A second axle 1 is pivotally connected with the first axle, the second axle being operably attached to the arm assembly. The first axle and the second axle may be longitudinally aligned during use. A third axle 4 is rotatably connected with the at least one arm assembly, the third axle being operably connected with the second axle. The first axle extends perpendicularly from the base member.

5. Claims 30, 32 and 36-38 are rejected under 35 U.S.C. 102(b) as being anticipated by *Smith* (US Pat. 108,401). *Smith* discloses an exercise device having a load *P*, the device comprising at least one arm assembly *H* and a handle assembly. The handle assembly comprises a generally U-shaped bracket defining a base member and supporting a gripping portion. From the base member extends a chain *M* having multiple links. Each link acts as an axle to permit a rotatable or pivotable connection. A first link adjacent the base member provides a first axle rotatably connected with the base member and extends angularly from the base member. A second link provides a second axle pivotally connected with the first axle, the second axle being operably attached to the arm assembly. A third link provides a third axle rotatably connected with the at least one arm assembly *H*, the third axle being operably connected with the second axle. The first and second axles may be longitudinally aligned during use. The handle assembly pivots in at least one orthogonal direction with respect to the first axle. The first axle pivots in at least two orthogonal directions with respect to the second axle. The first axle extends perpendicularly from the base member.

6. Claims 30, 34, 36 and 37 are rejected under 35 U.S.C. 102(b) as being anticipated by *Berne* (US Pat. 2,921,791). *Berne* discloses an exercise device comprising at least one arm assembly 6 operably attached to a load 38 (Fig. 12). A handle assembly comprises a generally U-shaped bracket 35b defining a base member and supporting a grip portion. A first axle 6e is rotatably connected with the base member and extends angularly from the base member. Note that 35a is internally threaded to be rotatable relative to first axle socket member 6e. A second axle 6d is pivotally connected with the first axle by a ball-type joint and is operably attached to the arm assembly. The first axle and the second axle may be longitudinally aligned during use. Fig. 9 shows the first and second axle nearly longitudinally aligned and it can be seen that the first and second axle clearly may be longitudinally aligned during use at some point. The handle assembly pivots in at least one orthogonal direction with respect to a first axis of rotation and the first axle pivots in at least two orthogonal directions with respect to the second axle.

#### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 35 rejected under 35 U.S.C. 103(a) as being unpatentable over *Roland* (US Pat. 799,270) in view of *Webber et al.* (US Pat. 6,579,213 B1). *Roland* has been discussed above,

and such discussion is incorporated herein. *Roland* discloses the invention as claimed except for the gripping portion rotatably connected between first and second legs of the U-shaped bracket.

*Webber et al.* discloses an exercise machine comprising a grasping member 44 rotatably attached to a handle base member 46, the handle base member being rotatably attached to an arm assembly 20. The rotatable attachment of the grasping member allows a user to adjust their hand/wrist position at any time during the course of an exercise without causing strain or binding to the wrist (col. 7, lines 3-7).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the gripping portion of *Roland* with the rotatable connection of *Webber et al.*, in order to allow a user to adjust their hand/wrist position at any time during the course of an exercise without causing strain or binding to the wrist.

#### *Allowable Subject Matter*

9. Claims 24, 26 and 39 are allowed.

10. Claim 33 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

11. The following claim drafted by the examiner and considered to distinguish patentably over the art of record in this application, is presented to applicant for consideration:

- 30. An exercise device having a load comprising:
- at least one arm assembly operably attached to said load;
  - a handle assembly comprising:
    - a generally U-shaped bracket defining a base member and supporting a gripping portion;
    - a first axle rotatably connected with the base member to rotate about a fixed axis relative to the base member and extending angularly from the base member, said U-shaped bracket pivoting in at least one orthogonal direction with respect to said first axle;
    - a second axle pivotally connected with the first axle, the second axle operably attached to said arm assembly; and
    - wherein the first axle and the second axle may be longitudinally aligned during use.—

### ***Response to Arguments***

12. Applicant's arguments filed November 22, 2004 have been fully considered but they are not persuasive. Applicant argues *Berne* does not teach or suggest a first axle rotatably connected with a base member as recited in claim 30, since there is no relative rotational movement between the handle 35b, the threaded ring 35a, and the socket 6e. As applicant notes, the socket member 6e is equated with the first axle of claim 30 and the threaded ring 35a is screwed down on socket member 6e. The Examiner's position is that being screwed down constitutes a rotatable connection between the socket member 6e (the first axle) and the threaded ring 35a (part of the base member of the U-shaped bracket of the handle assembly).

Applicant further argues that does *Berne* not disclose longitudinal alignment of the first axle and second axle and defines the member 35 as representative of the longitudinal axis. The

Examiner views the member 35 as merely a part of the base member, including threaded ring 35a. The first axle is represented by the socket 6e and the longitudinal axis of the socket 6e extending from its connection with stud ball 6d through its center and then through the center of the threaded ring 35a and end of member 35. This longitudinal axis can be longitudinally aligned with a longitudinal axis of the second axle.

### *Conclusion*

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.


*Trainor* (US Pat. 6,592,498 B1) discloses a handle assembly (Fig. 17) reading upon claim 30.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor K. Hwang whose telephone number is (571) 272-4976. The examiner can normally be reached Monday through Friday from 7:30 AM to 4:00 PM Eastern time.

The facsimile number for submitting papers directly to the examiner for informal correspondence is (571) 273-4976. The facsimile number for submitting all formal correspondence at this time is (703) 872-9306.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory L. Huson can be reached on (571) 272-4887.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Victor K. Hwang  
February 18, 2005

  
GEORGE E. RICHMOND  
PRIMARY EXAMINER